

§ 1201.102

5 CFR Ch. II (1–15 Edition)

§ 1201.102 Prohibition on ex parte communications.

Except as otherwise provided in § 1201.41(c)(1) of this part, ex parte communications that concern the merits of any matter before the Board for adjudication, or that otherwise violate rules requiring written submissions, are prohibited from the time the persons involved know that the Board may consider the matter until the time the Board has issued a final decision on the matter.

§ 1201.103 Placing communications in the record; sanctions.

(a) Any communication made in violation of § 1201.102 of this part will be made a part of the record. If the communication was oral, a memorandum stating the substance of the discussion will be placed in the record.

(b) If there has been a violation of § 1201.102 of this part, the judge or the Clerk of the Board, as appropriate, will notify the parties in writing that the regulation has been violated, and will give the parties 10 days to file a response.

(c) The following sanctions are available:

(1) *Parties.* The offending party may be required to show why, in the interest of justice, the claim or motion should not be dismissed, denied, or otherwise adversely affected.

(2) *Other persons.* The Board may invoke appropriate sanctions against other offending parties.

[54 FR 53504, Dec. 29, 1989, as amended at 70 FR 30609, May 27, 2005]

FINAL DECISIONS

§ 1201.111 Initial decision by judge.

(a) The judge will prepare an initial decision after the record closes and will serve that decision on all parties to the appeal, including named parties, permissive intervenors, and intervenors of right. The Board satisfies its legal obligation under 5 U.S.C. 7701(b)(1) by making electronic copies of initial decisions available to the Office of Personnel Management.

(b) Each initial decision will contain:

(1) Findings of fact and conclusions of law upon all the material issues of fact and law presented on the record;

(2) The reasons or bases for those findings and conclusions;

(3) An order making final disposition of the case, including appropriate relief;

(4) A statement, if the appellant is the prevailing party, as to whether interim relief is provided effective upon the date of the decision, pending the outcome of any petition for review filed by another party under subpart C of this part;

(5) The date upon which the decision will become final (a date that, for purposes of this section, is 35 days after issuance); and

(6) A statement of any further process available, including, as appropriate, a petition for review under § 1201.114 of this part, a petition for enforcement under § 1201.182, a motion for attorney fees under § 1201.203, a motion to initiate an addendum proceeding for consequential damages or compensatory damages under § 1201.204, and a petition for judicial review.

(c) *Interim relief.* (1) Under 5 U.S.C. 7701(b)(2), if the appellant is the prevailing party, the initial decision will provide appropriate interim relief to the appellant effective upon the date of the initial decision and remaining in effect until the date of the final order of the Board on any petition for review, unless the judge determines that the granting of interim relief is not appropriate. The agency may decline to return the appellant to his or her place of employment if it determines that the return or presence of the appellant will be unduly disruptive to the work environment. However, pay and benefits must be provided.

(2) An initial decision that orders interim relief shall include a section which will provide the appellant specific notice that the relief ordered in the decision must be provided by the agency effective as of the date of the decision if a party files a petition for review. If the relief ordered in the initial decision requires the agency to effect an appointment, the notice required by this section will so state, will specify the title and grade of the appointment, and will specifically advise the appellant of his right to receive pay and benefits while any petition for review is pending, even if the agency